Supreme Court, U.S.
FILED

No. 01 464 SEP 17 2001

OFFICE OF THE

IN THE

Supreme Court of the United States

GLENDA J. LINER,
Petitioner

v.

DONTRON, INC., T/A RADIO STATION WYCA-FM, a wholly owned subsidiary, CRAWFORD BROADCASTING CO., DONALD CRAWFORD
Respondent

On Petition For Writ of Certiorari
To the United States Court of Appeals
For the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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53 pp

QUESTIONS PRESENTED

1. Does 42 U.S.C. 2000e-3(a) provide employees with actionable claims for opposing sexual harassment and retaliation for conduct by supervisor before EEOC claim is filed or termination occurs?

2. Whether the court of appeal erred by applying the wrong standard of review to determine pretext and adverse employment action in retaliation claim under 42 U.S.C. 2000e-2

PARTIES

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PETITION FOR A WRIT OF CERTIRARI

OPINIONS BELOW

The opinion of the United States Court of Appeals appear at Appendix pp. A to the petition and is unpublished. The opinion of the United States District Court appears at Appendix pp. B to the petition and is unpublished.

JURISDICTION

Petitioner seeks the court's review of the judgment entered on May 21, 2001 by the United States Circuit Court of Appeals for the Seventh Circuit, by a Petition for Writ of Certiorari pursuant to the jurisdiction conferred by 28 U.S.C. Section 1254 (1). This petition is timely filed because it was mailed within ninety days of June 18, 2001, the date a motion for hearing was denied in the court below. Rules 13.3 and 29.2.

Jurisdictional basis for this court is invoked under 28 U.S.C. 1254 (1)

29 CFR 1604. 11(c)

The guidelines impose vicarious liability on employers for the acts of a supervisory employee, it is irrelevant whether it superior's conduct was authorized or even forbidden by employer.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Supremacy Clause of the Constitution provides in relevant part: "[T] he Laws of the United States *** shall be the supreme Law of the Land *** any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST.ART, VI, cl.2.

42 U.S.C. 2000e-3(a) in pertinent part provides:

Protection of an employee who "opposes any practice made an unlawful employment practice by this subchapter" or anyone who has "made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C.2000e-2

In consideration of whether employer's justification for dismissing its employee is pretextual in Title VII action, the inquiry is not whether the reason was correct business judgment but whether decision makers honestly acted on that reason.

29 CFR 1604. 11(d)

Employer is liable for co-worker harassment if it "knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action".

STATEMENT OF FACTS

Glenda Liner an African American female began working as an account executive for respondents Christian Radio Station WYCA-FM in 1988-1991 and again in April 1993 and worked in that capacity until June 1997 when she was terminated.

Liner's duties included selling advertising airtime for commercial and program accounts, along with the collections and servicing of accounts. The respondent's are Donald Crawford, President (Dontron Inc., Crawford Broadcasting Co). Charles Bogardus, Corporate Sales; Michael Cary, Director of Finance; and Taft Harris, Supervisor- General Manager, Station Manager, Sales Manager and Account Executive of WYCA-RADIO.

Taft Harris (Supervisor) has worked for respondent since 1969 in Texas and relocated in 1979 to WYCA-FM to host a Gospel Music Show. As General Manager and Station Manager, he over sees the operations of the entire station. As Sales Manager, he is responsible for the procurement of advertising contracts and daily activity managements of Account Executives to perform daily tasks as servicing and collections for on-air accounts and the sales of unsold inventory Harris maintained his own clients and sold airtime.

Two scheduled meeting a week were held during the plaintiff- Glenda Liners' employment at station. Meetings were scheduled at 5:30 pm Tuesday- for the Production and Sales staff to go over current on air

accounts. Thursday sales meeting with Account Executives first then they would meet with Harris to discuss any new sales information for the station. During the day Taft Harris would randomly stop Account Executives from leaving station in AM to hold a meeting, or detain them until past 7:00 pm or later in evening. Plaintiff-Glenda Liner received a series of reprimands for failing to comply with Harris's verbal or written memos, Liner has claimed that the various infractions for which she was reprimanded were not company policies because they were not uniformly enforced.

The evidence presented in deposition that Harris stated in a verbal and documented meeting, October 30, 1996. " I will make this environment for you to work in very difficult because I will put so many prerequisites on you, such as documenting everything that is said, making you write up everything that I say, pulling you off the road until you comply with directions, seeking out the loss of your commission when you fail to follow directions, plus anything else that needs to be done form a disciplinary standpoint, that both corporate and I agree on. I will seek those things out against you." Harris went on to say " ...if you fail to follow my directions with and including the very next infraction, expect disciplinary action...or ultimately termination. Expect it."

On November 20, 1996, Donald Crawford (President) wrote memo of possibility of Glenda Liner becoming Sales Manager.

On November 22, 1996, Taft Harris (Supervisor) wrote memo he would begin sales training.

On February 12, 1997, Taft Harris (Supervisor) wrote memo Sales Manager position was placed on hold.

Harris had Dontron deduct commission money from Liner on three separate occasions November 1996- $2575.00, April 1997-$1976.00. After second deduction Liner wrote Crawford again regarding deduction she also complained of Harris (Supervisor) harassment of verbally hollering and screaming at her which she considered adverse conditions and opposed activity by Harris. After Liner's commission check May 15, 1997 third deduction was made of $3952.00, Liner then filed EEOC claim May 21, 1997 and Illinois Department of Labor claim. Liner alleged that she had been discriminated against based on her sex because respondent had withheld her commissions for violation of company policy and that a similarly, situated male employee had not been so disciplined. Liner also charged that supervisor Harris had harassed her.

During the time Liner reported Harris to Crawford memos of what Harris called policies became more frequent. Crawford answered by written fax on April 24, 1997-" I agree with Taft Harris. You do the right thing, you follow Company policies and procedures to the letter of the law, or you will be disciplined fully in accordance with our policies. It really is as simple as that. No phone conversation will be needed. We have a brand new station coming on line. You should bend over backward to do the right thing and protect your job. Sincerely, Donald B. Crawford, President".

Harris began retaliating against Liner for writing to complain to Crawford he issued her nine memos days/weeks after she complained. Crawford came to station in May 1997, but never meet with Liner to address concerns nor did Charlie Bogardus who accompanied him from the corporate office.

Harris would issue two or three memos on some days. He would cc: maybe one to corporate, employment files, or just issue Liner. Looking at evidence of days, memos were issued policies were inconsistent. The alleged harassment by supervisor Harris became more humiliating. Moving Liner away from the sales staff in another office on the other side of the building, not allowing her any sales leads, taking on air clients away from her and transferring them to Kyle Simpson or himself or not allowing her to talk to new employees or he would terminate her.

In June, 1997 Harris and Simpson changed company clauses and policies by playing favoritism towards clients with rates and timing. Liner was not allowed to sell new radio station WYBA when it went on air. However, her clients from WYCA wanted to be on both stations and her to remain their Account Executive. In June 1997, Harris went as far as to have Liner change her memo she wrote him, by dictating memo and having her rewrite it in her own hand writing and inserting it was not written under duress. Liner was more intimated by Harris, but could do nothing else because she had already written to owner Donald Crawford.

In June 1997, Harris and Simpson wrote to Crawford to ask him to terminate Liner. Crawford

gave permission for Harris to terminate her the next time he felt infraction was made.

On Friday, June 27, 1997 the last day before Liner was scheduled for vacation and the final end of the month collections were made Harris with Simpson present verbally terminated Liner around 8:30pm.

After Liner was terminated, she filed additional charge with EEOC in which she claimed that she had been retaliated against for filing her original charge.

The Appeals court found; With respect to her ability to sell advertising time, it is undisputed that Liner was very good, and WYCA generated a high amount of sales revenue for the station's parent company, Dontron, due to her efforts. It is also not disputed that at one point, Dontron and Harris planned to train Liner to take over Harris's position as sales manager. Despite Liner's excellent sales record, however Harris began issuing a series of written reprimands and instituting disciplinary actions based on what he saw as Liner's failure to comply with company.

The Appeals court found Liner had produced evidence that Harris disciplined her more harshly than Simpson for a similar infraction, that she was not at fault for a violation of company policy for which she was held responsible, and that she was not made aware of some of Harris's policies until after she was reprimanded for violating them. She also produced evidence that Harris himself was not following some of the policies that he reprimanded her for violating.

The Illinois Department of Labor found that the deductions from commissions appear to have been illegal under the Wage Payment and Collection Act. See 820 *ILCS* 115/9 (1997). Under federal rules, see 29 C.F.R. sec. 541.118.

Had Liner not written to Crawford regarding Harris harassment, there would have been no need to terminate Liner. Harris was in control and could continue to harass and humiliate her and take deductions from commission the memo's written would not have been needed because he made policies up for Liner only. Crawford had agreed with actions made by Harris she had no other recourse. The decision maker president of company made decision to ignore Liners complaints. Until IDOL and EEOC, claims what agency would have know of adverse action by Dontron/Crawford Broadcasting Company-WYCA-Radio.

Liner could have continued to work but for her complaints to Crawford first then IDOL and EEOC. Liner would not have been a threat to Harris or company. Liner could have continued to sell advertising time and endured until constructive discharge had occurred. No men were treated similarly; Liner would not have been treated in this way but for her sex.

REASONS FOR GRANTING PETITION

1. Does 42 U.S.C. 2000e-3(a) provide employees with actionable claims for opposing sexual harassment and retaliation for conduct by supervisor before EEOC claim is filed or termination occurs?

The Seventh Circuit Court of Appeals Sanctioned Such A Departure by the District court From the Accepted Course of Judicial Proceedings As To Call For An Exercise of This Court's Supervisory Power.

The plain language of Subchapter 20 provides a broad remedial measure designed to assure equality of employment, this subchapter was designed to bar not only overt employment discrimination, but also practices that are fair in form but discriminatory in operation.

The Seventh Circuit by affirming the District Court's decision imposed a more stringent test for determining what is a "protected activity" or "oppositional behavior" to practices reasonable believed to be unlawfully discriminatory. The result is incongruous given the Fifth Circuit's decision in *Long v. Eastfield College*, 88 F.3d 300 (5th Cir. 1996). The First Circuit in *Hochstadt v. Worcester Found. For Experimental Biology, Inc.*, 425 F.Supp. 318, 324 (D.C. Mass. 1976) *aff'd*, 545 F.2d 222 (1st Cir. 1976), noted that "opposed any practice made an unlawful employment practice" is very broadly constructed.

Numerous decisions hold that the parallel anti-retaliation provision of Title VII and the ADEA are similar, and "cases interpreting the latter provision are frequently relied upon in interpreting the former." *Shirley v. Chrysler First, Inc.*, 970 F.2d 39, 42 n. (5th Cir. 1992). See also, *Passer v. American Chemical Soc.*, 935 F.2d 322,330 (D.C.Cir. 1991); *Merrick v. Farmers Ins. Group*, 892 F.2d 1434, 1441 (9th Cir. 1990). Those circuits that have considered ADEA retaliation claims have generally adopted the analysis used in Title VII cases without comment. *Powell v. Rockwell Int'l Corp.*, 788 F.2d 279 (5th Cir. 1986).

The Seventh Circuit rejected an overly strict interpretation of Title VII's anti-retaliation provision in *McDonnell v. Cisneros*, 84 F.3d 256,262 (7th Cir. 1996). ("[p] assive opposition" is protected activity covered by the anti-retaliation provision).

The Sixth Circuit noted in *EEOC v. Ohio Edison Co.*, 7 F.3d 541, 545 (6th Cir. 1993):

[C] ourts have frequently applied the retaliation provisions of employment statutes to matters not expressly covered by the literal terms of these statutes where the policy behind the statue supports a nonexclusive reading of the statutory language.

At least two circuits have recognized that plaintiffs are not required to have proved underlying discrimination claims and need only show that they were acting in "good faith" with a "reasonable belief" that a violation existed to assert a retaliation claim. See *Sumner v. U.S. Postal Service*, 899 F.2d 203, 209 (2d Cir. 1990) and *Moyo v. Gomez*, 32 F.3d 1382 (9th Cir. 1994).

The First Circuit requires only that a plaintiff show he had opposition to some honestly held, even if mistaken belief that a discriminatory practice existed. *Monteiro v. Poole Silver Co.*, 615 F.2d 4 (1st Cir. 1980).

Title VII requires no finding that a particular motive was the sole cause of an employer's action; the requirement is simply that the motive predominated over the legitimate reason offered by defendant or was a "but for" cause of defendant's action. See *McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273, 282 n. 10, 96 S.Ct. 2574, 2579 n. 10, 49 L.Ed.2d 493 (1976).

This court has agreed with those courts holding that opposed activity need not actually violate Title VII. It is sufficient if plaintiff acts on a reasonable belief, that defendant has committed an unlawful employment practice. *Rucker v. Higher Educ. Aids Bd.*, 669 F.2d 1179, 1182 (7th Cir. 1982); *Parker v. Baltimore & Ohio R.R. Co.*, 652 F.2d 1012, 1019-20 (D.C. Cir 1981); *Sias v. City Demonstration Agency*, 588 F.2d 692, 695-96 (9th Cir. 1978); *Croushorn v. Board of Trustees of Univ. of Tenn.*, 518 F.Supp. 9, 25 (M.D. Tenn. 1980). Plaintiff in this case was acting on such a good faith and reasonable belief in protesting defendant's conduct toward her. When defendant deducted commission money on three separate occasions, she complained to Crawford concerning harassment by Harris he then issued additional memos to her and later went to Crawford to ask permission to terminate Liner. In *Harker v. Utica College of Syracuse University*, N.D.N.Y. 1995, 885 F.Supp.378. Protected activity under Title VII

includes for purposes of retaliation claim, inter alia, informal protests of discriminatory employment practices, including making complaints to management, writing critical letters to customers, protesting against discrimination by industry or by society in general, and expressing support of coworkers who have filed formal charges.

The Appeals court erred in accepting Dontron's nondiscriminatory claim for receiving EEOC claim on June 13, 1997. Liner filed original claim on May 21, 1997. In compliance with Section 706 (b) and 706 (e) of 42 U.S.C. 2000e-5(b), 2000e-5(e). Require EEOC to serve the respondent with notice of the charge within 10 days after the charge is fixed. June 13, 1997 is 23 calendar days or 14 business days after charge was filed. This would leave District EEOC in violation of this section. A reasonable belief is Dontron had received complaint. Harris had also requested around the same time permission to terminate Liner from Crawford.

Employees who have a reasonable belief that they have opposed an unlawful employment practice are in need of protection against retaliation in response to such opposition before termination occurs. The purpose of the anti-retaliation provisions of Section 1981 and the ADEA is to give assurance to persons making claims of discrimination that they will not have action taken against them simply for engaging in such activity. In the decision below, the Seventh Circuit Court of Appeals sanctioned such a departure from the accepted course of judicial proceedings as to call for an exercise of this court's supervisory power.

2. Whether the court of appeal erred by applying the wrong standard of review to determine pretext and adverse employment action in sex discrimination claim under 42 U.S.C. 2000e?

The Circuit Courts of Appeal are split in Their Interpretation of this important statue.

Nothing in the language of either 42 U.S.C. sections 1981 or 42 U.S.C. 2000e-2 suggests that Congress intended to limit sex discrimination pretext claims to employees to prove employer honestly believed in reason. According to Webster, the definition of honestly is 1. in an honest manner; 2. truly; really; used as an intensive. How would an employee ever prove emotions of their employer?

In consideration of whether employers' justification for dismissing its employee is pretextual in Title VII action, the inquiry is not whether the reason was correct business judgment but whether decision makers honestly acted on that reason.

All courts have recognized that the question facing triers of fact in discrimination contained in the Civil rights Act of 1964 reflect an important national policy. There will seldom be "eyewitness" testimony as to the employer's mental processes. *Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711. However, none of this means that trial courts or reviewing courts should treat discrimination differently from other ultimate questions of fact. Nor should they make their inquiry even more difficult by applying legal rules which were devised to govern "the basic

allocation of burdens and order of presentation proof," *Burdine*, 450 U.S., at 252, in deciding this ultimate question. The law often obliges finders of fact to inquire into a person's state of mind. As Lord Justine Bowen said in treating this problem in an action for misrepresentation nearly a century ago:

> "The state of a man's mind is as much a fact as the state of a man's mind at a particular time is, but if it can be ascertained it is as much a fact as [460 U.S. 711, 717] anything else." Edgington v. Fitzmaurice, 29 Chicago. Div. 459, 483 (1885).

The Appeal Court erroneously thought that respondent was required to submit direct evidence of pretext for sex discriminatory intent, and erroneously focused on the question of prima facie case rather than directly on the question of discrimination. Thus, we cannot be certain that its findings of fact in favor of Dontron were not influenced by its mistaken view of the law.

In appropriate circumstances, the trier of fact can reasonable infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the fact finder is entitled to consider a party's dishonesty about a material fact as "affirmative evidence of guilt." *Wright v. West*, 505 U.S. 277, 296 (1992); see also *Wilson v. United States*, 162 U.S. 613, 620-621 (1896); 2 J. Wigmore, Evidence 278(2), p. 133 (J. Chadbourn rev.ed. 1979). The Court of Appeal disregarded critical evidence favorable to Liner-namely, the evidence supporting her prima facie case

and undermining Dontron's nondiscriminatory explanation.

The hopes of Congress and this Court that agency law would provide a relatively clear set of principles that would enable the lower courts to develop just and uniform rules of decision have not borne their intended fruit. Different Circuits have developed sharply different views of agency law, and some have misplaced the role of agency law as a guide to the application of Title VII by effectively submerging the purposes of the statue beneath the arcane of agency law as understood in that Circuit. This case presents an opportunity for this Court to restore the primacy of the statue and its purposes, making clear both the manner in which agency law should properly be used in applying the statue and the point at which the courts should look the purposes of Title VII rather than agency law for the principal guidance.

CONCLUSION

42 U.S.C. 2000e-3 is of great public importance but the Circuit Courts of Appeal are split in their holdings on the application of "opposed activity". The decision below undercuts enforcement of section 2000e-3.

It is in the public interest for this Honorable Court to resolve that split to provide uniform construction and application to this important statue. Construing Sections to make clear that employees may assert claims of harassment and retaliation by their supervisor to employer. Employee is protected under that section of 42 U.S.C. before discharge occurs and EEOC claim then is filed. When claim is filed and proof is provided employee will not have additional retaliation by supervisor. It is in public interest to provide uniform construction of these statues. The holding below is in the minority.

Lastly, the overly narrow interpretation of the term "honestly believe" or "honestly acted on". Given in the decision below so conflicts with the accepted interpretation of this term under sex discrimination pretext as to require an exercise of this Honorable Court's supervisory powers to remedy this sanctioned departure from the usual course of judicial proceedings.

This Honorable Court should grant certiorari and reverse the holding below.

Respectfully submitted,

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APPENDIX A
OPINION OF THE UNITED STATES COURT OF APPEALS

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued April 24, 2001
Decided May 21, 2001

Before

Hon. RICHARD A. POSNER, *Circuit Judge*

Hon. TERENCE T. EVANS, *Circuit Judge*

Hon. ANN CLAIRE WILLIAMS, *Circuit Judge*

No. 00-4088

GLENDA J. LINER,
Plaintiff-Appellant,

v.

DONTRON, INC.,T/A RADIO STATION WYCA-FM, a wholly Owned subsidiary,
Defendant-Appellee

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 99 C 1261

Wayne R. Andersen, *Judge*

ORDER

Glenda Liner appeals a grant of summary judgment to her former employer, T/A Radio Station WYCA-FM (WYCA), a wholly owned subsidiary of Dontron, Inc. (Dontron), in her lawsuit under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., alleging sex discrimination and retaliatory discharge.

In 1988 Liner began working as a sales account executive for radio station WYCA selling advertising air time, collecting advertising fees, and servicing advertising clients. She quit in 1991 based on her disapproval of how her immediate supervisor, Taft Harris, who acted as general manager, station manager, and sales manager, treated employees at the station. Although Harris continued to manage the station and the sales department, Liner returned to work for WYCA in 1993, again as a sales account executive.

With respect to her ability to sell advertising time, it is undisputed that Liner was very good, and WYCA generated a high amount of sales revenue for the station's parent company, Dontron, due to her efforts. It is also not disputed that at one point, Dontron and Harris planned to train Liner to take over Harris's position as sales manager. Despite Liner's excellent sales record, however, Harris in 1995 began issuing a series of written reprimands and instituting disciplinary actions based on what he saw as Liner's failure to comply with company policy. Among other things, Harris reprimanded Liner and sometimes

retained a portion of her earned commission for failing to submit sales and time log forms on a daily basis; accepting a faxed copy of a signed contract in lieu of an original; not attending a mandatory sales department staff meeting; executing a contract with a client for an air time rate without Harris's prior approval; allowing an advertising account to remain on the air even though it was behind on payments; allowing advertising account to remain on the air even though it was behind on payments; allowing advertising to air although the client's contract had expired; and showing a client the station's "rate card" for advertising time.

In a May 2, 1997, memorandum, in which Harris reprimanded Liner for accepting payment on an account with a check made out to her personally and then reimbursing the station in cash, Harris warned her that she would be terminated if she violated company policy another time. Liner was again reprimanded the following month for not seeking approval on an account contract from Kyle Simpson, a male account executive who had been promoted to sales coordinator (an intermediate position between sales manager and account executive) and was eventually promoted to sales manager. Harris did not, however, move to discharge Liner, stating that he and Simpson would give her another chance. Liner received two more memoranda during June, both from Simpson, reprimanding her for not submitting a contract to him for approval and submitting contracts for approval that were either incomplete or deviated from station rate or contract length policy.

On June 12, 1997, the owner of WYCA, Donald Crawford, authorized Harris to fire Liner. Sometime after June 13, 1997, Crawford received notice from the EEOC that Liner had filed a charge of discrimination with the agency against the station alleging sex harassment and sex discrimination based on deduction from her commission.[1] Liner was terminated from her employment at WYCA on June 27, and she filed a second EEOC charge claiming that she was terminated in retaliation for filing her initial EEOC charge. After receiving a right-to-sue letter from the EEOC, she filed this lawsuit, alleging that she was discriminated against on the basis of sex during her employment at WYCA, that she was terminated in retaliation for filing a charge with the EEOC, and that she was wrongfully terminated in violation of Illinois law.

Dontron moved for summary judgment, and Liner, who was then represented by counsel, responded. The district court granted Dontron's motion, reasoning primarily that Liner failed to present direct evidence of discrimination and that she did not meet her burden of producing evidence that she was performing her job satisfactorily, or that Harris's and/or Simpson's reprimands were a pretext for discrimination. The court also concluded that Liner failed to provide a casual line between her EEOC charge and her

[1] In its order, the district court cited June 12, 1997, as the date the notice of Liner's EEOC charge was sent to Dontron. The notice, which was included in the record in the district court, states June 13, 1997. Liner does not contest on appeal that June 13 is the correct date.

termination from which a jury could infer retaliation. Liner, now without counsel appeals.[2]

Although Liner argued in the district court that a statement made by Harris to a female coworker constituted direct evidence of discrimination, she does not raise this point on appeal and therefore it is waived as an issue. See United States v. Turner, 203 F.3d 1010, 1019 (7th Cir. 2000). Liner instead appears to rely on the indirect burden-shifting method of proof outlined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). To satisfy a prima facie case of discrimination pursuant to McDonnell Douglas, Liner must demonstrate that she belonged to a protected class, she performed her job satisfactorily, she suffered an adverse employment action, and similarly situated employees not in the protected class were treated more favorably. O'Regan v. Arbitration Forums, Inc., Nos. 99-4044 & 00-1306, slip op. at 7 (7th Cir. Apr. 9, 2001). If Liner demonstrates a prima facie case, then the burden shifts to Dontron to present a legitimate, nondiscriminatory reason for firing her. Id. To rebut the offered explanation, Liner

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[2] Both parties erroneously name Donald Crawford as a defendant. Crawford was voluntarily dismissed from the lawsuit shortly after Dontron filed its motion for summary judgment, and Liner does not challenge this voluntary dismissal.

must present evidence that Dontron's reason is a pretext for sex discrimination, pretext meaning "a dishonest explanation, a lie rather than an oddity or an error." Id. (citations and internal quotations omitted).

The district court, in granting summary judgment, concluded that Liner failed to establish a prima facie case of discrimination because she did not produce evidence, that she was performing her job in a satisfactory manner and, even if she had produced such evidence, she did not offer evidence from which a jury could infer that Dontron's reason for firing her was dishonest. On appeal, Liner seems to argue first that she was performing her job satisfactorily based on her excellent sales record and that she was qualified to be promoted to sales manager, a position ultimately given to Mr. Simpson. Liner's evidence of her proven ability to sell advertising, however, is undisputed but irrelevant to the question whether she was performing her job in a satisfactory manner. Dontron did not refuse to promote her because her sales were lagging; rather, Liner personnel file contained a litany of complaints of insubordination and failure to comply with company policies and procedures that, despite her fine sales record, constituted substandard work performance. Cf. Mills v. First Fed. Sav. & Loan Ass'n, 83 F.3d 833, 846 (7th Cir. 1996) (with respect to pretext analysis, employee's satisfactory performance in some aspects of job does not necessarily undermine employer's explanation for termination).

Liner's other arguments apparently relating to whether Harris's disciplinary actions were a pretext for discrimination are similarly unavailing. Liner believes that a state court's determination that the deductions from her earned commission violated the Illinois Wage Payment and Collection Act, 820 ILCS 115/9 (1997), somehow demonstrates a violation of Title VII. That the deductions were not valid under state law, however, does not speak to the issue whether Dontron honestly believed that it should deduct commission to prevent future violation of company policy. See, e.g., O'Reagan, Nos. 99-4044 & 00-1306, slip op. at 8-9 (although company's employment agreement may have been illegal, unenforceable, and "bad business decision," that company forced employees to sign agreement did not establish pretext).

Furthermore, a February 12, 1997, memorandum from Harris to Liner and Simpson declaring that neither employee would be promoted to sales manager at that time does not relate to whether Harris's decision not to promote Liner was pretextual. The memo was addressed to both Liner and Simpson, and Liner has not produced any evidence to refute Harris's legitimate explanation for temporarily suspending the promotion of either Liner or Simpson to sales manager—that there was no need to hire or train additional sales executives at that time. Liner also does not explain the relevance of Harris's inability to remember during his deposition whether some of the policies he instituted with the sales department were

transmitted in writing verbally. Nor does Liner elucidate how Harris's awareness (or unawareness) of account executive billing relates to the issue of pretext.[3]

A closer question relating to pretext, however, is presented by Liner's argument that the company policies she was accused of violating were either inconsistently applied to all sales not at fault for the episode in which she was reprimanded for allowing an ad to go on the air even though the client's contract had expired. Specifically, both Liner and a coworker of Liner's named Tara Locke testified during their depositions that the problem was obviously a bookkeeping error beyond Liner's control. Second, although Harris insisted during his deposition that he pre-approved all extensions of existing contracts, Liner testified that that was not the policy as she understood it. Locke also testified that Simpson was once late for a sales meeting, but Harris's reaction was informal and mild compared to the yelling and formal reprimand Liner received for the same offense. Finally, Locke explained that Harris himself would often violate the same policies for which he would reprimand Liner: using faxed copies in place of original contracts, allowing clients to air ads despite delinquent accounts, and writing personal checks to the station to cover his client's delinquent accounts.

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[3] In her brief, Liner also claims that Harris admitted that a client can see a schedule of rates for air time, or a "rate card." But this alleged admission appears nowhere in Harris's deposition and is therefore not supported by the record.

Assuming that the above facts demonstrate that the station's policies were inconsistently applied or unclearly established, a recent Title VII decision of this court may support Liner's contention that she established a genuine issue of material fact regarding whether the establishment and application of the policies were pretextual. In Gordon v. United Airlines, Inc., No. 99-4068, slip op. at 15 (March 29, 2001) (petition for rehearing and petition for rehearing en banc pending), a flight attendant trainee for an airline carrier was terminated after committing a series of company policy violations. A divided panel reversed the grant of summary judgment to the defendant employee because the court's "review of the record reveal[ed] inconsistencies in the definition and disparities in application" of disciplinary policies that called into question the employer's explanation for firing the employee. Id. at 19-20. We reversed the grant of summary judgment even though the employee admitted that he performed an unauthorized action leading to his termination. Id. at 20.

Like the employee in Gordon, Liner has produced evidence that Harris disciplined her more harshly than Simpson for a similar infraction, that she was not at fault for a violation of company policy for which she was held responsible, and that she was not made aware of some of Harris's policies until after she was reprimanded for violating them. She also produced evidence that Harris himself was not following some of the policies that he reprimanded her for violating. Finally, as in Gordon, Liner admitted that she had

violated company policy. But unlike the plaintiff in Gordon, see id. at 15, Liner was warned several times that any further violations of company policy, specifically executing contracts without prior approval from Simpson and providing incomplete information when seeking contract approval, would result in her termination.

In addition, at one point in her deposition Liner admitted that regardless of whether it was actual company policy not to accept checks from clients personally made out to her, Harris believed that Liner violated company policy for doing so. This admission, coupled with Locke's testimony that Harris "was a lousy manager in general" whose "inability to manage did not just affect the women, it affected the men, anyone who had a family, outside obligations," paint a picture of Harris as a poor manager, with perhaps unreasonable expectations of his employees. Nevertheless, showing that an employer is a bad manager does not demonstrate pretext because "the issue of pretext does not address the correctness or desirability of reasons offered for employment decisions. Rather, it addresses the issue of whether the employer honestly believes in the reasons it offers." Wade v. Lerner New York, Inc., 243 F.3d 319, 323 (7th cir. 2001) (citation and internal quotations omitted). See also Pitasi v. Gartner Group, Inc., 184 F.3d 709, 718 (7th Cir. 1999) (To demonstrate pretext , it is insufficient for employee "to show that his employer fired him for incorrect or poorly considered reasons. He must establish that the employer did not honestly believe the reasons it gave for terminating

him."). We do not believe that Liner has offered any evidence to dispute her own concession that Harris actually believed that Liner violated company policy, regardless of whether a company policy was actually established. Therefore, Liner has not established that irregularities in company policy constituted evidence of pretext for sex discrimination.

Liner next argues that the district court improperly granted summary judgment on her retaliation claim. She offered no direct evidence of retaliatory discharge, and so, to establish a prima facie case of retaliation, she must provide evidence that she reported or opposed conduct protected by Title VII; she suffered an adverse employment action; and there is causal relationship between her opposition to the prohibited activity and the adverse job action. Basith v. Cook County, 241 F.3d 919, 933 (7th Cir. 2001). It is undisputed that Liner meets the first two requirements of a prima facie case of retaliation. In order to establish the third requirement, causation, Liner must demonstrate that Dontron would not have fired her "but for" her opposition to the prohibited conduct. Id. She has not done so. Dontron did not receive notice of Liner's EEOC charge until after June 13, 1997, one day after Crawford authorized Harris to terminate her. Thus, there is no chronological link between the receipt of the EEOC charge and Crawford's decision to terminate Liner. Furthermore, as explained in the above discussion regarding Liner's sex discrimination claim, Liner has not produced evidence to refute Dontron's legitimate business reason for firing her:

that she repeatedly failed to conform to company policy despite repeated warnings that she would be terminated if the violations continued.

Liner raises several other issues relating to her retaliation claim, none of which were raised before the district court. First, she claims that Crawford knew about Harris's alleged discriminatory treatment against her before she filed her EEOC complaint because she wrote a letter to him complaining of the deductions from her commission and of Harris's harsh reprimands. But to state a valid retaliation claim, the employee's "complaint must involve discrimination that is prohibited by Title VII," Hammer v. St. Vincent Hosp. and Health Care Ctr., Inc., 224 F.3d 701, 707 (7th Cir. 2000), and in this letter she does not mention sex discrimination or any type of harassment based on gender. Thus, her letter did not constitute protected expression under Title VII and she does not satisfy a prima facie case of retaliation.

She also appears to make an ineffective investigation claim by arguing that Dontron's corporate officers did not address Harris's alleged discrimination or hostile environment when they visited the station and that Dontron does not have a human resources department. Besides not raising these issues in the district court, Liner does not develop a comprehensible argument supported by anything in the record. Accordingly, the issue is waived. See Andersen v. Hardman, 241 F.3d 544, 545 (7th Cir. 2001) (even pro se litigants must provide "cogent arguments in any appellate brief).

As a final matter, Dontron moved to strike Liner's appendix and parts of her reply brief. Only four of the documents in Liner's appendix were presented to the district court, and the remainder are unauthenticated and were not presented in Liner's response to summary judgment or in the record on appeal. Liner responds that the district court was aware of the substance of the documents because she referenced the contents of them in her deposition. But because we do not permit litigants "to stray beyond the bounds of the record for reasons so obvious and familiar that they scarcely require mention," see United States v. Hoover, No. 98-2600 et al., slip op. at 15 (7th Cir. April 12, 2001) (Rovner, J., concurring), those documents presented for the first time in Liner's appendix are struck from the record, and we disregard statements in her reply brief that cite only those documents for support, McClendon v. Indiana Sugars Inc., 108 F.3d 789, 795 (7th Cir. 1997) ("Evidence that was not proffered to the district court...is not part of the appellate record" and "has no place in an appellate brief."); United States v. Phillips, 914 F.2d 835, 840 (7th Cir. 1990) ("An appellant may not attempt to build a new record on appeal to support his position with evidence that was never admitted in the court below.").

Because Liner has failed to provide any evidence demonstrating that she performed her job satisfactorily or that Dontron's reasons for firing her were pretextual or retaliatory, we AFFIRM. We moreover GRANT Dontron's motion to strike Liner's appendix and portion's of her reply brief. We DENY

AS MOOT Dontron's motion for leave to file a reply in support of their motion to strike.

APPENDIX B
OPINION OF THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GLENDA J. LINER

Plaintiff

v. **No. 99 C 1261**

DONTRON INC., -T/A RADIO STATION WYCA-FM, A WHOLLY OWNED SUBSIDIARY, DONALD CRAWFORD, CRAWFORD BROADCASTING CO., **Honorable Wayne R. Andersen**

Defendants

MEMORANDUM, OPINION AND ORDER

Glenda Liner ("plaintiff") has sued her former employer, Dontron, a wholly owned subsidiary of Donald Crawford Broadcasting Co., ("defendant") for employment discrimination under Title VII and for wrongful termination. Defendant has moved for summary judgment on the Complaint. For the reasons stated below, we grant this motion.

FACTUAL BACKGROUND

The facts are taken from the defendant's statement of facts and plaintiff's response to that statement. We note at the outset that neither party followed the local rule concerning this statement. Many of defendant's asserted "facts" are actually legal conclusions or

argument and plaintiff frequently fails to cite the source for her dispute with an asserted fact. We ignore all of defendant's assertions that lack a factual predicate and deem admitted those facts which plaintiff has not controverted in compliance with the local rule.

Glenda Liner, an African-American, began working as an account executive for defendant's gospel radio station WYCA-FM in approximately April, 1993 and worked in that capacity until she was fired. Her duties included selling advertising airtime to clients, collecting billings and writing commercials. Taft Harris is the general manager for WYCA and has worked for defendant since 1969. As general manager of the station, he has the authority to establish the policies which govern the procurement of advertising contracts for WYCA. Harris held mandatory meetings on Monday, Wednesday and Friday at 5:30 P.M. with account executives to discuss sales. Account executives could be excused from these meetings only if they obtained Harris' permission beforehand. Despite this policy, plaintiff frequently missed these meetings and was issued a written reprimand for doing so on February 4, 1997, which she acknowledged by signing her name.

Although plaintiff previously had experienced some success in defendant's employ, beginning in 1995 she received a series of reprimands for failing to comply with company policies. (Plaintiff has claimed that the various infractions for which she was reprimanded were not company policies because they were not uniformly enforced, but has not submitted any specific evidence to support conclusion.) On

November 14, 1995, defendant reprimanded her for failing to timely submit sales call reports. On July 17, 1996, plaintiff received a written warning for failing to submit proper original contracts for advertising time. In January, 1997, plaintiff did not follow defendant's procedures concerning a concert promotion and received yet another reprimand. In March, 1996, plaintiff did not submit a contract to Harris for approval before sending it to a client resulting in a reprimand from Harris. Harris would not have approved this contract because the advertising rate was too low. In March, plaintiff also entered into a contract with a client that provided for a straight billing arrangement instead of complying with defendant's policy that clients prepay for their advertising contract. Plaintiff received written reprimands for both of these transgressions. Plaintiff also admitted in her deposition that she was in violation of corporate policy on a number of occasions.

On April 10, 1997, Harris was forced to reprimand plaintiff again for going on vacation and leaving an unpaid balance for a commercial that already had aired. This violation of company policy was followed by several other violations including airing commercials for which contracts had not been signed, informing clients about rates given to other clients and receiving payment for air time in the form of checks made out to her. After Harris learned of this, he told her that any future violations of company policy would result in termination. Despite this warning, plaintiff failed to follow company policies regarding presentment of her contracts for approval and renewing expiring accounts in a timely fashion. After several more warnings, the owner of the station,

Donald Crawford, authorized Harris to fire plaintiff on June 12, 1997 and she was fired on June 27th.

For her own part, plaintiff contends that defendant's reprimands for violations of company policy are evidence of discriminatory harassment. However, with one exception, she does not offer any proof that she was unfairly singled out for unfair treatment or that defendant selectively enforced its policies against her. In fact, she stated more than once during her deposition that Harris sincerely believed that she had violated company policy when he reprimanded her. However, plaintiff does offer the testimony of Patricia Kelly, another discharged co-worker, who testified that plaintiff sometimes was penalized on commission payments because her contracts allegedly did not conform to company practices, but that Kyle Harris had some of the same problems with his contracts, but did not have commissions deducted for these contracts. Surprisingly, defendant does not respond in any was to this assertion.

Plaintiff also offers the testimony of a co-worker, Tara Locke, who stated that Harris had once said that "he was tired of being around all of us women and wanted more more men on this staff so that he could get work done." She also said, however, that Harris said thus in a joking fashion and that Harris was equally hard on men and women on the staff.

Plaintiff filed a charge with the Equal Employment Opportunity Commission ("EEOC") on May 21, 1997. She alleged that she had been discriminated against on the basis of her sex because defendant had

specific facts showing a genuine issue of material fact and that the moving party is not entitled to judgment as a matter of law. *Anderson v. Liberty Lobby*, 477 U.S. 242, 252 (1986). A genuine issue of material fact exists only if the evidence is such that a reasonable jury could only return a verdict in favor of the nonmoving party. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 3223-24 (1986). The plain language of Rule 56 mandates the entry of summary judgment against a party who fails to establish the existence of an element essential to its case and on which it has the burden of proof at trial. The production of only a scintilla of evidence will not suffice to oppose a motion for summary judgment. *See Anderson*, 477 U.S. at 252.

Defendant first contends that plaintiff's EEOC charge does not encompass the actions about which she complains here and, therefore, we do not have jurisdiction to hear her case. As the Seventh Circuit has stated, "a Title VII plaintiff cannot bring claims in a lawsuit that are not included in her EEOC charge...For allowing a complaint to encompass allegations outside the ambit of the predicate EEOC charge would frustrate the EEOC's investigatory and conciliatory role, as well as deprive the charged party of notice of the charge. "*Cheek v. Western and Southern Life Ins. Co.*, 31 F.3d 497, 500 (7th Cir. 1994). Although a claim in a civil suit need not duplicate the EEOC claim, there must be "a reasonable relationship between the allegations in the charge and the claims in the complaint," and it must appear that "the claim in the complaint can reasonably be expected to grow out of an EEOC investigation of the allegations of the charge." *Vela v.*

withheld her commissions for violations of company policy and that a similarly situated male employee had not been so disciplined. She also charged that he supervisor had harassed her in unspecified ways. After she was fired, plaintiff filed another charge with the EEOC in which she claimed that she been retaliated against for filing her original discharge.

After receiving her right to sue letter, plaintiff filed this action. Plaintiff generally alleges that defendant maintains a de facto policy of not promoting women to managerial positions and maintained a hostile work environment. In Count One, she alleges that she was discriminated against (in unspecified ways) on the basis of sex in violation of Title VII. (Plaintiff also alleges a violation of 42 U.S.C. 1983 which prohibits discrimination under color of state law and is inapplicable to her case.) In Count Two, she claims that her termination was retaliatory in violation of Title VII. In Count Three, she alleges a pendent state claim for wrongful termination.

DISCUSSION

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, do not show a genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment carries the initial burden of demonstrating an absence of evidence to support the position of the nonmoving party. *Doe v. R.R. Donnelley & Sons, Co.*, 42 F.3d 439, 443 (7th Cir. 1994). The nonmoving party must then set forth

Village of Sauk Village, 218 F. 3d 661, 664 (7th Cir. 2000), *quoting Cheek*, 31 F.2d at 500.

We agree with defendant that plaintiff's "de facto" discrimination claim charging a general failure to hire and promote women, as well as a failure to promote her, is not reasonably related to her EEOC charge. That charge specifically deals with defendant's deduction of commissions from plaintiff's checks because she disobeyed company policies when it did make those deductions from a similarly situated male's check. Although plaintiff also generally alleges "harassment", it is quite a leap from even that general charge to allegations concerning defendant-wide promotion and hiring decisions, as well as defendant's alleged failure to promote her, and, therefore, we find that this claim is barred.

Defendant makes the same concerning plaintiff's hostile environment claim. Plaintiff's EEOC charge is devoid of language charging that defendant maintained a hostile environment. However, she does generally allege (although without any supporting facts) that her supervisor harassed her. Therefore, we find that, her complaint is "reasonably related" to her charge. We turn now to the merits of plaintiff's claims.

Plaintiff in her complaint claims that defendant did not promote her to a sales manager position, harassed her when it unfairly enforced company policies against her, fired her because of her gender and retaliated against her because she filed an EEOC complaint. As we discussed above, however, plaintiff cannot raise defendant's failure to promote her in

federal court without having first raised this claim before the EEOC. That being said, we also note that plaintiff has proffered absolutely no evidence that she was as qualified or more qualified than those promoted instead of her (other than her own opinion), let alone that the promotion decisions were motivated by gender discrimination. Plaintiff's self-serving assessment of her own abilities is not sufficient to defeat summary judgment absent any other proof. *Schultz v. General Elec. Corp.*, 37 F.3d 329,334 (7th Cir. 1994). This leaves plaintiff's challenge to defendant's decision to punish her for infractions of its company policies and to fire her before the court.

Title VII makes it unlawful for an employer to discriminate against an employer because of an employee's sex. 42 U.S.C. 2000e-2(a)(1). Plaintiff needs proof of intentional discrimination to prevail under disparate treatment analysis. *St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993). A Title VII plaintiff can satisfy her burden of proof by two avenues: (1) she may present evidence of discriminatory intent or, because of the difficulty in directly proving discrimination, (2) she may use the indirect, burden-shifting procedure set forth in *McDonnell Douglas Corp v. Green*, 411 U.S. 792 (1973).

Plaintiff primarily relies on indirect evidence in support of her claim that defendant discriminated against her. However, she also argues that a remark made by Harris is direct evidence of sex discrimination. According to plaintiff's co-worker, Tara Locke, Harris once joked that he wanted more men on his staff so that he could get more work done.

However, Locke's further testimony makes it plain that Harris' comment was a joke and that she did not take it seriously. Although this remark was not made with reference to plaintiff, plaintiff argues that we may infer gender discrimination from it because Harris was a decision maker with respect to enforcement of company policies against plaintiff and had input into the decision to fire her. *See Hunt v. City of Markham*, 219 F.3d 649, 652 (7th Cir. 2000).

Although it is true that stray remarks made by decision makers around the time of the challenged action may constitute evidence of sex discrimination, the reporter of this remark clearly believed it to be a joke and did not take it seriously or believe that it was evidence of any anti-female bias. She further testified that Harris was equally hard on men as women. Given the factual context of this isolated remark, we do not find that it is direct evidence of anti-gender bias.

We, therefore, turn to plaintiff's evidence under the indirect method of proof. To establish a prima facie case of employment discrimination, plaintiff must show that (1) she was in a protected class; (2) she was performing her job satisfactorily; (3) she was the subject of an adverse employment action; and (4) others outside the protected class were treated more favorably. *Young v. Will County Dep't of Public Aid*, 883 F. 2d 290, 293 (7th Cir. 1997), citing *McDonnell Douglass*, 411 U.S. at 804. If the defendant establishes a legitimate nondiscriminatory reason for the adverse employment actions, plaintiff must show that the articulated reason is a pretext for

discrimination. Of course, the ultimate burden of proof remains on plaintiff at all times. *Id.*

Plaintiff argues that although she was performing her job satisfactorily, Harris unfairly harassed her by arbitrarily enforcing company policies against her. She contends that the alleged corporate policies for which was penalized were not corporate policies at all, citing *Sarsha v. Sears Roebuck & Co.*, 3 F.3d 1035 (7th Cir. 1993) in support of her position. However, this case is inapposite to the plaintiff's situation. In *Sarsha,* the Seventh Circuit found that there was a genuine issue of material fact concerning whether a "no dating" policy truly existed. In addition, a defendant correctly notes, the court pointed out that there also was a question as to whether the plaintiff actually had been warned that he was doing something in violation of company policy prior to his termination. In this case, the record is replete with instance after instance when defendant explicitly warned plaintiff that she was violating specifically identified policies and that she would be disciplined if she continued to flaunt them. Plaintiff fails to remember anything about the meetings she had with Harris during which she received these warnings, but there is no question that she received them and that she did not heed them. Moreover, plaintiff herself admitted that she violated at least some of these policies, such as submitting contracts to clients which had not been approved first. Thus, the record is replete with evidence that plaintiff was not performing satisfactorily and, other than her own assessment that defendant unfairly evaluated her with respect to these policies, there is no evidence to the contrary.

However, plaintiff has presented some evidence that defendant may have docked her commission checks for certain infractions, while failing to do so with respect to male employees. Patricia Kelly, who reviewed at least some of the contracts, so testified. Unfortunately, plaintiff has not provided any specifics concerning these instances. However, plaintiff argues that this presents a material issue of fact. Assuming that plaintiff was treated, as least in some instances, differently than some of her male counterparts, we must examine defendant's proffered reason for singling her out.

Defendant argues that plaintiff's claims defeated because she has admitted that Harris disciplined her of her sex, but because he honestly believed that she violated company policy. We agree. Plaintiff does not make out a prima facie case for sex discrimination by simply establishing that others not in the protected class were treated differently with respect to at least some of the alleged instances. She must show that the decisions concerning her own discipline were motivated, at least in part, by gender discrimination. Her admission to the contrary necessarily defeats her claim.

Plaintiff also argues that she was terminated because of her sex and in retaliation for filing her first Title VII complaint. Again, the record is clear that plaintiff continually violated several company policies, such as submitting unapproved contracts, receiving checks for contractual commitments made out to her personally, and airing commercials without having contracts on file. She complains that these policies

were unfair, but has not presented any evidence that she did not, in fact, violate them. To the contrary, she admits otherwise. Plaintiff has not shown that she was performing satisfactorily. Even assuming she was, she has not presented any evidence that anyone with her record in defendant's employ and not in the protected class was treated any differently.

Plaintiff also claims that her termination was in retaliation for her initial EEOC complaint. It is well - settled that plaintiff's termination need not be discriminatory to establish a retaliatory discharge under Title VII. Plaintiff must prove, however, that she engaged in statutorily protected activity (undisputed); (2) that she suffered an adverse action (undisputed) and (3) a casual link exists between the protected activity and the adverse action. 42 U.S.C. 2000e-3; *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 753 (7th Cir. 1999). Once the employee meets her burden, the employer must present a legitimate nondiscriminatory reason for its action. *Id.* If the employer is successful, the employee must demonstrate that the reason was pretextural and that the true reason was retaliatory.

Defendant received plaintiff's EEOC charge on June 12, 1997. That same day Donald Crawford, defendant's owner, sent Harris a memo instructing his to terminate plaintiff for the next serious violation "irrespective of the consequences to the station." Plaintiff was fired on June 27, 1997. Plaintiff argues that the proximity of these events is evidence of a casual link. However, defendant has submitted reams of evidence, including a series of letters, which inform plaintiff of her violations of company policies, which

more than establish that plaintiff was not meeting defendant's expectations. Indeed, over a month before she filed her EEOC charge, defendant informed her in writing that if she violated one more company policy, she would be fired. The undisputed evidence is that after she received this warning, plaintiff submitted contracts in violation of these policies. Defendant, therefore, has demonstrated that her termination was not motivated by retaliation, but rather by plaintiff's dismal performance record. Therefore, we find that defendant has not satisfied her burden of proof to establish a prima facie case for retaliation.

CONCLUSION

For all the forgoing reasons, we grant defendant's motion for summary judgment and terminate this case.

It is so ordered.

Wayne R. Andersen
United States District Judge

Dated: October 26, 2000

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

June 18, 2001

Before

Hon. RICHARD A. POSNER, *Circuit Judge*
Hon. TERENCE T. EVANS, *Circuit Judge*
Hon. ANN CLAIRE WILLIAMS, *Circuit Judge*

No. 00-4088

GLENDA J. LINER,
Plaintiff-Appellant,

v.

DONTRON, INC., T/A RADIO STATION WYCA-FM, a wholly subsidiary,
Defendant-Appellee,

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 99 C 1261

Wayne R. Andersen, *Judge.*

ORDER

On June 5, 2001, the plaintiff-appellant filed a petition for rehearing and petition for rehearing en banc. All the judges on the original panel have voted to deny a rehearing, and none of the judges in active service have requested a vote on the petition for rehearing en banc. The petitions for rehearing and rehearing en banc are therefore DENIED.